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No. 92-1207

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

STATE OF MARYLAND,

Petitioner,

v.

ANTHONY GRANDISON, SR.,

Respondent.

On Petition For A Writ of Certiorari To The Circuit Court for Somerset County, Maryland

SUPPLEMENTAL BRIEF

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Petitioner, the State of Maryland, pursuant to Supreme Court Rule 15.7, hereby supplements the Petition for a Writ of Certiorari filed in this Court on January 15, 1993.

ARGUMENT

The State of Maryland's petition for a writ of certiorari presents the question whether rules intended merely to facilitate a capital sentencing jury's consideration of mitigating factors fall within the "watershed rules of criminal procedure" exception to the non-retroactivity doctrine of *Teague v. Lane,* 489 U.S. 288 (1989). This issue arises out of the state

post conviction court's having vacated Respondent Anthony Grandison, Sr.'s death sentence on the ground that the capital sentencing form and instructions were indistinguishable from those held unconstitutional in *Mills v. Maryland*, 486 U.S. 367 (1988). Notwithstanding that Grandison's death sentence had become final two years prior to *Mills*, the court held that Grandison was entitled to retroactive application of that decision on the theory that *Mills* had established a watershed rule of criminal procedure.

Ten days after the filing of the State's petition challenging that ruling, this Court decided *Graham v. Collins*, 61 U.S.L.W. 4127 (No. 91-7580) (U.S. January 25, 1993). There, the Court held that *Teague*'s watershed rule exception did not apply to Graham's claim, made in reliance upon *Penry v. Lynaugh*, 492 U.S. 302 (1989), that the capital sentencing scheme employed in his case prevented the jury from giving effect to mitigating evidence of youth, family background, and positive character traits. 61 U.S.L.W. at 4132. In so holding, the Court, as it has done in the past, alluded to the fact that this second *Teague* exception has not been fully delineated: "*Whatever the precise scope of this exception*, it is clearly meant to apply only to a small core of rules. . . ." *Id.* (emphasis added). *Graham* thus provides further support for Petitioner's contention that explication of this exception is warranted.

In addition, *Graham* itself is virtually dispositive of the merits of the present case. The Court's holding that *Penry* did not establish a watershed rule *a fortiori* applies to *Mills* error, which likewise implicates a sentencing jury's consideration of mitigating factors. As such, if the Court were not inclined to grant

plenary review, the decision below should be summarily vacated and remanded in light of *Graham*.

CONCLUSION

For the reasons stated herein and in the Petition for a Writ of Certiorari, the State of Maryland respectfully requests that the Court issue a writ of certiorari and reverse the judgment of the Circuit Court for Somerset County, Maryland. Alternatively, the State of Maryland requests that the Court grant the writ and summarily vacate and remand in light of *Graham v. Collins*.

Respectfully submitted,

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February 5, 1993